

A. Probable Cause And The Evidence In This Case

1. There is probable cause to believe that the defendant has violated 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 924(c) as charged by indictment on March 2, 1999. The evidence in this case is strong and consists of eyewitness testimony of Philadelphia police officers Walker and Reynolds who will testify that on August 26, 1998 they observed the defendant sitting in back of a house at 639 North Hutton Street. Both officers knew the defendant because other officers had given them his photograph and told them that he was wanted on a warrant for failure to appear in court following a VUFA arrest earlier in 1998. As Officers Walker and Reynolds approached the defendant, both saw a clear plastic baggie in his left hand. Reynolds recovered the baggie as the defendant was arrested. The baggie contained 36 smaller pink tinted plastic packets, each containing a white chunky substance, which later was found to total 4.13 grams of “crack” cocaine.

Officer Walker frisked the defendant incident to arrest and found a 9 millimeter Ruger, Model P95DC, with serial number obliterated, loaded with 11 live rounds of ammunition. Officer Walker also found \$145 U.S.C. on the defendant at the time of his arrest. After being advised of the charges against him, the defendant admitted he did possess the gun and the drugs, but claimed that he had not pointed the gun at the arresting officers.

2. The strength and nature of the case against the defendant and the corresponding probability that the defendant will be incarcerated for a significant period of time, establishes his danger to the community and increases the high risk that the defendant will not appear as required by the Court.

B. Maximum Penalties

1. The defendant is charged with one count of possession of a controlled substance,

“crack” cocaine, with the intent to deliver it, which exposes the defendant to a maximum penalty of not more than 20 years imprisonment, a \$1,000,000 fine, from 3 years to a lifetime of supervised release, and a \$200 special assessment, together with forfeiture of the gun and cash.

2. The defendant also is charged with drug trafficking while armed, which mandates that a five year period of incarceration be served consecutively to any other sentence imposed.

3. The government estimates conservatively that under the Sentencing Guidelines that the defendant faces a prison term of 117-131 months without parole.

4. Accordingly, the defendant has a substantial incentive to flee.

C. Prior Criminal Record.

Anthony Johnson is 20 years of age. He has two prior adult arrests, both of which remain open because the defendant has failed to appear for trial. The instant offenses form the basis of one open state case.

1. On March 25, 1998, the defendant was arrested on VUFA charges. He failed to appear for court on April 17, 1998, and a bench warrant was issued for him. This remained open until after the defendant’s second arrest in August 1998. The matter was then listed for trial. On February 1, 1999, the defendant again failed to appear, and a second bench warrant was issued for him. It remains open. CP 98-10-0952 1/1.

2. While awaiting trial in his VUFA case, the defendant was again arrested and charged again with firearms and with drug violations on August 26, 1998. He failed to appear for court in this matter as well, and on December 30, 1998, a third bench warrant was issued for him. It also remains open. CP 98-09-0869 1/1. This forms the basis of the instant case.

D. Ties To The Community

1. While the defendant arguably has some ties to the community, the legislative history of the Comprehensive Crime Control Act of 1983 indicates that Congress found that community or family ties do not and should not weigh heavily in the risk of flight analysis. See Sen. Comm. on Judiciary, Comprehensive Crime Control Act of 1983, S. Rep. No. 98-225, 98th Cong., 1st Sess. 24, 25 (1983).

E. History and Character of the Defendant

The defendant is a lifelong resident of Philadelphia who has no visible means of support. Clearly, when the consequences were far less severe than those he faces in this matter, the defendant chose to violate his conditions of release from custody. Now, he is a far greater risk of flight given the severity of the penalty he faces if he is convicted here.

II. CONCLUSION

Nothing short of 24-hour custody and supervision can ensure the appearance of this defendant and the safety of the community. The conditions of release enumerated in the detention statute at Section 3142(f) would serve only to inform the Court, after the fact, that the defendant has fled or resumed his criminal career

Therefore, it is ORDERED that:

(1) The defendant be committed to the custody of the United States Marshall for confinement;

(2) The defendant be afforded reasonable opportunity for private consultation with counsel; and

(3) On order of a Court of the United States, or on request of an attorney of the

government, the person in charge of the corrections facility in which the defendant is confined deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

BY THE COURT:

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE
IN THE UNITED STATES DISTRICT COURT